

ISSUE DATE: September 8, 1999

DOCKET NO. E,G-999/R-98-1307

ORDER REPEALING RULE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayner  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Planned Repeal of Rules  
Governing Contracts or Agreements Between a  
Public Energy Utility and an Affiliated Interest,  
Minnesota Rules, Part 7825.2100

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**PROCEDURAL HISTORY**

In 1997, the Commission launched an exploration of possible improvements to the process of reviewing utility contracts with affiliates.<sup>1</sup> Chair Edward Garvey initiated activities in this docket with a letter and list of questions and concerns to stakeholders.

Between October 23, 1997 and April 17, 1998, various parties filed comments and response comments. The Round Table participants, consisting of representatives of utilities, marketers, contractors, and the public agencies, met as a whole and in a subgroup several times from December 10, 1997 to April 17, 1998. On March 26, 1998, the participants filed a report recommending commencement of a generic docket to explore refining Commission procedures on affiliate transactions consistent with existing statutory law. The participants in that docket recommended, among other things, that the Commission repeal Minnesota Rules, part 7825.2100.

On May 15, 1998, the Commission initiated another docket to consider procedures for reviewing contracts and arrangements between a public utility and its affiliated interests.<sup>2</sup> The Commission issued a notice of the new proceeding and requested comment on whether it should, among other things, repeal Rule 7825.2100. The Commission received comments and reply comments. With a quorum present, the Commission met on August 27, 1998 to consider the matter. Various public energy utilities and regulatory agencies submitted comments or made oral arguments supporting the rule's repeal. These parties argued that the rule is not needed to protect the public interest, and that it frustrates utilities' efforts to obtain goods and services from the least-cost provider. They noted that utilities had often sought, and the Commission had often granted, requests to vary the rule's requirements. The Commission voted, among other things, to authorize the rule's repeal. On September 14, 1998, the Commission issued its ORDER INITIATING REPEAL OF RULE, GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING

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In the Matter of the Chair's Round Table on Affiliated Interest Contacts Issues, Docket No. E,G-999/CI-97-1426. A "Round Table" is a Commission-sponsored colloquia where Commissioners, Commission staff, and stakeholders discuss generic issues of policy and process. Attendance at and participation in Round Tables is open to all stakeholders and all members of the public.

<sup>2</sup>In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements, Docket No. E,G-999/CI-98-651.

PROCEDURES (September 14, 1998 Order). In that Order, the Commission opened the present docket for the repeal of Rule 7825.2100.

The *State Register* published the Commission's Request for Comments in the docket on January 11, 1999. About this same time, the Commission mailed its request to a broad audience, and solicited comments through its *Weekly Calendar* and on its internet site on the World Wide Web. The Commission received four written comments, each supporting the rule's repeal.

On March 31, 1999, the Revisor of Statutes approved the form of the proposed rule repealer.

On July 15, 1999, the Commission authorized the release of two draft documents: the Notice of Intent to Repeal Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing If 25 or More Persons Request a Hearing (Dual Notice) and Statement of Need and Reasonableness (SONAR), which included the Commission's plan for publicizing the proposed rule repeal (Notice Plan). On the same day, the Commission forwarded those documents to the Office of Administrative Hearings (OAH) for review.

By letter dated July 20, 1999, the OAH approved the Commission's Notice Plan, and assigned an administrative law judge (ALJ) to review the rule repeal.

The Commission then implemented its Notice Plan. Specifically --

- On July 21, 1999, the Commission mailed the SONAR to the Legislative Reference Library, and submitted its Dual Notice for publication in the *State Register*.
- On July 23, the Commission mailed a copy of its Dual Notice and the repealer language to all people who had requested to receive notice of 1) this rulemaking specifically, 2) energy rulemakings generally, or 3) any Commission rulemaking. Additionally, the Commission mailed the Dual Notice and repealer to the service list from the Chair's Round Table, and to the service list for this docket, including the four parties that had responded to the Request for Comments.
- On July 26, 1999, the Commission posted the Dual Notice and the SONAR on its World Wide Web site.
- On August 2, the *State Register* published the Commission's Dual Notice. The Dual Notice invited people, by September 1, to submit comments or a request for a hearing on the proposed rule repeal.
- On August 5, 1999, the Commission issued a press release on the proposed rule repeal, listing sources of additional information. The press release resulted in a notice in the August 16 Bulletin of the National Association of Regulatory Utility Commissioners.
- Starting August 13, the Commission began including a notice about the rulemaking in its *Weekly Calendar*.

On September 1, 1999, the period for commenting on the proposed rule repeal ended. The Commission received one written comment in response to its Dual Notice. The commentator opposed the rule repeal but declined to seek a hearing, acknowledging that "parties that disagree with the Commission's decision have had ample opportunity to discuss their positions" with the Commission. The Commission received no requests for a public hearing on the rule repealer, and no requests to be notified when the Commission submitted its order adopting rules to the OAH.

The Commission met on September 2, 1999, to consider the matter. With a quorum present, the Commission voted to repeal Minnesota Rule, part 7825.2100. The Commission also voted to

authorize its Executive Secretary to sign an order repealing the rule, after the Commission had had sufficient time to review the draft order, consistent with Commission practice.

### **FINDINGS AND CONCLUSIONS**

For the reasons set forth in the Commission's SONAR, the Commission finds that the rule repeal is needed and reasonable. Nothing has happened since the Commission issued its SONAR to alter its opinion.

Furthermore, the Commission finds that all notice and procedural requirements for repealing Rule 7825.2100 have been fulfilled.

Having found that the rule's repeal is needed and reasonable, and that the procedural requirements for its repeal have been fulfilled, the Commission will repeal the rule. Having reviewed the draft Order Repealing Rule, the Commission authorizes its Executive Secretary to sign this Order. The Commission directs its staff to take the necessary steps to implement this Order.

### **ORDER**

1. The above-captioned rule, as cited in the *State Register* on August 2, 1999, is repealed pursuant to the Commission's authority under Minnesota Statutes, §§ 216B.08 and 216B.48.
2. The Commission's Executive Secretary is authorized to sign this order, and the Commission's staff shall take the necessary steps for implementation.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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